SECRETARY OF LABOR
WASHINGTON

APR 3 0 2020

Richard L. Trumka
President, AFL-CIO
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Washington, D.C. 20210

Dear President Trumka:

I write in response to your letter of Tuesday, April 28, regarding the Labor Department's approach to the workplace threat posed by coronavirus. I have learned that correspondence such as yours can help us at the Department do our jobs better; your letter made some points and suggestions that we will give further consideration. Thank you.

Your letter also reflected some basic misunderstandings, similar to misstatements by critics of the Administration which have been dutifully reported in the media. Allow me to correct a few.

First, your letter repeats the rhetorically gratifying but false and counterproductive assertion that the Department's Occupational Safety and Health Administration (OSHA) has been "missing in action" during the pandemic. Yet, your letter proceeds to describe some of the many things OSHA has done to respond in this crisis, including providing extensive guidance, taking steps in conjunction with the Centers for Disease Control and Prevention to preserve the respirator supply for health care workers, conducting thousands of investigations of complaints, and highlighting the rights and protections of whistleblowers. I appreciate that you may want *different* actions from OSHA, but to obscure the guidance OSHA has given, and to suggest OSHA is indifferent to worker protection and enforcement, is to mislead employers about their duties and workers about their rights.

OSHA's website contains extensive guidance on the virus for the benefit of workers and employers and in fact, the cop *is* on the beat. The Administration's critics undermine worker safety by telling companies otherwise.

Second, your letter disparages OSHA's guidelines as "only voluntary," suggesting that there are no compliance obligations on employers. That is false—and again risks misleading employers about their duties. Thankfully your letter proceeds to list the many legal authorities OSHA possesses to address employers who fail to take appropriate steps to protect their workers. Those include the OSH Act's "general duty clause" (p. 6), and OSHA rules regarding respiratory protection, personal protective equipment, eye and face protection, sanitation, and hazard communication (p. 5). Your letter also notes (p. 6) that the very guidance it disparages can (together with CDC guidance and industry standards) support an enforcement action under the general duty clause.

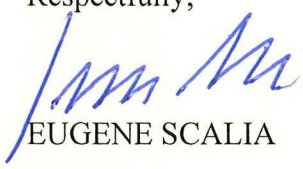
Third, your letter (p. 5) urges OSHA to adopt an emergency temporary standard because "in the face of a novel virus, employers must not wait for scientific certainty of harm before implementing precautions to protect workers." But employers *are* implementing measures to protect workers, in workplaces across the country. (And employers who fail to take steps are likely violating existing OSHA obligations.) Moreover, the steps employers are taking include the very measures your letter say should be in a new rule, e.g., "risk assessment," "sanitation and cleaning," personal protective equipment, and "training and education" (pp. 5-6). Indeed, the contents of the rule detailed in your letter add nothing to what is already known and recognized (and in many instances required by the general duty clause itself). Compared to that proposed rule, OSHA's industry-specific guidance is far more informative for workers and companies about the steps to be taken in *their* particular workplaces. That is one of the reasons OSHA has considered tailored guidance to be more valuable than the rule you describe. Your letter identifies a second reason: the virus is "novel" and there is little "scientific certainty." In the words of another labor leader, the steps to be taken after 9/11 and Hurricane Sandy were clear, but "[t]his is different. It changes day to day." Guidelines allow flexibility and responsiveness to that change, in a way a rule would not.

But to repeat, OSHA will not use guidelines as a substitute for enforcement—rather, the agency has the tools and intent to pursue both avenues; that is our two-pronged approach.

One final point: Coronavirus is a hazard in the workplace. But it is not unique to the workplace or (with the exception of certain industries, like health care) caused by work tasks themselves. This by no means lessens the need for employers to address the virus. But it means that the virus cannot be viewed in the same way as other workplace hazards. Your letter inadvertently demonstrates this, urging (p. 7) a rule requiring "all employers" to report "all" worker infections to OSHA "within 24 hours," "whether or not they are determined to be work-related." (The emphasis is yours.) What you propose would burden employers and overwhelm OSHA with information that—you concede—is "not . . . work-related." The proposal illustrates how the measures one might ordinarily prescribe will not work here.

President Trumka, thank you again for your letter. To reiterate, you make points we will consider. The coronavirus presents grave and shifting challenges that require sustained attention; we evaluate daily what additional steps we can and should take. I certainly share your concern for the workers who have died from COVID-19. And I respect all that the AFL-CIO and other unions have done through the years to protect workers. I ask that you show due respect for the steps the dedicated men and women at OSHA are taking now.

Respectfully,



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